IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.856 OF 2004

Shri.Deepak Akaram Babar]
Age Adult, Occ: Nil]
R/o Radhika Niwas,]
S.T.Colony, Datta Nagar,]
Sangli.]..Applicant

Vs.

State of Maharashtra ...Respondents

....

Mr.R.V.More with Mr.Prashant Patil Advocate for Applicant
Mr.V.B.Konde-Deshmukh, A.P.P. for the State

....

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : SEPTEMBER 9,2004

P.C.

1. Heard the learned advocate for the applicant and learned A.P.P. for the State.

2. The applicant is seeking bail in C.R.No. 142 of 2001 registered at Vishrambaug Police Station, Sangli. The said case is registered under Section 3(1) and 3(2) of the Maharashtra Control of

Organised Crime Act, 1999 (Hereinafter referred to as "M.C.O.C., Act".).

3. The applicant has earlier preferred an application for bail before this Court i.e. Criminal Application No. 2105 of 2002. The said application came to be rejected by detailed order by this Court. The present application has been preferred on the grounds that though there are about 10 cases registered against the applicant and the charge-sheets were filed. Only in one of the ten cases, the applicant was involved with the members of organised crime syndicate. The said case was taken into consideration while rejecting earlier bail application. However, thereafter, in the said case i.e. Sessions Case No. 181 of 2001 which pertained to C.R.No. 40 of 2000 of Vishrambaug Police Station, the applicant and co-accused came to be acquitted therein. Thus,it is submitted that there is no material to show that the applicant was engaged in organized crime with the members of organized crime syndicate or on behalf of such syndicate.

4. It is further submitted that the co-accused Samir Patil has been released on bail by this Court and hence, on the ground of parity also, the present application has been pressed. However, as far as the fact that Samir Patil has been released on bail is concerned, the same was considered while rejecting the criminal application no.2105 of 2000 and hence, this cannot be said to be a fresh ground.

5. As far as first ground is concerned that though there are ten offences in which the charge-sheets have been filed against the applicant, however, in only one case i.e. C.R.No. 40 of 2000 of Vishrambaug Police Station, the charge sheet has been filed against the applicant and Dadasaheb @ Vishwanath Ramakant Sawant and the members of the Gang belonging to Dadasaheb @ Vishwanath Ramakant Sawant. In the said case, the learned Sessions Judge acquitted the applicant. Thus, it is further submitted that there is no material to show that the applicant was engaged in an organized crime as a member of the organized crime syndicate headed by Dadasaheb @ Vishwanath Ramakant Sawant.

6. It is an admitted fact that as far as Gang of Dadasaheb @ Vishwanath Ramakant Sawant is concerned, charge sheets have been filed against the said Gang in about 36 cases. The applicant was involved in ten cases in which charge-sheets have been filed. Out of the said cases, the applicant has been acquitted in five cases. Out of these five cases C.R.No. 40 of 2000 (Sessions Case No. 181 of 2001), was the only case in which the charge sheet has been filed against the applicant and Dadasaheb @ Vishwanath Ramakant Sawant and his Gang members. The learned A.P.P. has placed reliance on the decision of the Division Bench of this Court in the case of **Bharat Shantilal Shah Vs. State of Maharashtra reported in 2003 All MR (Cri.) 1061.** In the said decision in para 27, it has been observed as under:

. "The circumstrances that followed the charge are not material. The provision only defines what is continued unlawful activities and refers to whether a person has been charged over a period of ten years for the purpose of seeing whether the person is charged for the first time or has been charged often.

> The circumstance of conviction or acquittal that followed the charge are not material. The limited purpose is to see antecedents of the person."

7. The charge sheet has been filed against the applicant under Sections 3(1) and 3(2) of the M.C.O.C. Act. The punishment for a person committing an offence of organized crime is provided in Section 3 of the Act. Sections 2(d), 2(e) and 2(f) of the MCOC Act are relevant and they read as under:

> . (1) In this Act, unless the context otherwise requires,--
>
> . (d) "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;
>
> . (e) "organised crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of

> gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency;
>
> . (f) "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime;". .

8. For this purpose, it is necessary to go by the basic principle of interpretation of statutes. A statute must always be interpreted with reference to the objects for which it is enacted, with reference to the preamble of the enactment. In the present case also therefore, it must be kept in mind that this enactment of MCOC Act is enacted by the Legislature for the purpose of making special provisions for the prevention and control of criminal activity by a person or a gang and for matters connected therewith or incidental thereto meaning thereby connected and incidental or organized crime and organized crime syndicate.

9. If we read definition of Section 2(1)(d) again, what has been defined as continuing unlawful activity is being a member of organized crime syndicate in respect of which any activity

prohibited by law and done repeatedly i.e. more than once for which charge sheet has been filed in the court of competent jurisdiction in the past ten years. The purpose of definition is to define what continuing unlawful activity is and it is for the purposes of defining what is continued unlawful activity that those charges are to be taken into consideration. The activity must be continuing unlawful activity and to define it with clarity it is provided that any person who in the past was charge sheeted for more than one charge of such activity or crime the cognizance of which has been taken and imprisonment for which is more than three years should be taken into account. The fact of the person having been charge sheeted in such cognizable offences in the past makes the unlawful activity, continuing unlawful activity.

10. From the material on record it is clear that the applicant was involved in C.R.No. 40 of 2000 in which chargesheet has been filed against him and Dadasaheb @ Vishwanath Ramakant Sawant i.e. the leader of the gang and his Gang members. It is true that he has been acquitted in the said case.

However, as observed by the Division Bench, the circumstances and the conditions of acquittal that followed charge sheet, are not material. In this view of the matter, the acquittal of the applicant in Sessions Case No. 181 of 2001 which relates to C.R.No. 40 of 2000 would be of no help to the applicant.

11. In this view of the matter, the application is rejected. The trial Judge shall not be influenced by any observations in this order while deciding the trial.

(V.K.TAHILRAMANI,J)